IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION No. 4598 of 2005

SHAIKH ZIYAUL HAQUE... Petitioner
V/S
CHARITY COMMISSIONER AND ORS. .. Respondents

None present for petitioner
Mr. V.S. Mhaispurkar AGP for respondent no.1
Mr. M. A. Kadam for respondent no.2.
Mr. A.S. Khatib for respondent no.3.

CORAM: S. B. MHASE J.
DATE:20/04/2006

P.C.:

1. Order dated 13th April 2005 passed by the Charity Commissioner, Mumbai in application no. J-4/195 of 2004 granting permission under Section 36 of the Bombay Public Trust Act in respect of the sale of the property of the Trust is under challenge. This court has issued a notice on 15th July 2005 and granted ad interim relief in terms of prayer clause (d). Prayer (d) is to the following effect:

> "(d) That during the pendency and final hearing of the petition, the order passed by the Respondent no.1 in Application No. J-4/195 of 2004 dated 13.04.2005 be stayed and the Respondent no.2 be restrained by the temporary order of injunction of this Honourable Court from selling and disposing off the said property situate

on the land and structures standing thereon admeasuring 423 square yards bearing Old Nos. 414-113 New No. 2/C 13913 and E/13617, Old Survey No. 373-374 and New Survey No. 1AA/349 and 1A/35000 C.S. No. 1985 of Byculla Division and Municipal 'E' Ward Nos. 4435(1) and Old Street No. 300 New Street No. 600-604 at Haines Road [now known as Bapurao Jagtap Marg], Byculla, Mumbai 400 008, to the respondent no.3;"

Thereafter the matter appeared on several times and mentioned for adjournment. Today, when the matter is called both learned counsel for the petitioner and the petitioner himself are absent.

2. It is brought to the notice of this court that the ad interim relief was granted on 15th July 2005, however, prior to that the conveyance deed has been executed in favour of respondent no.3 by respondent no.2 on 5.7.2005 and it is registered. The original document is also shown to this court. There is an affidavit filed to that effect. In view of this so far as the interim relief is concerned it was / is found to be infructuous when it was granted. Since the petitioner and his counsel is absent, dismissed for default.

(S. B. MHASE J.)